

RULE 5.030. ATTORNEYS

(a) Required; Exception. Every guardian and every personal representative, unless the personal representative remains the sole interested person, shall be represented by an attorney admitted to practice in Florida. A guardian or personal representative who is an attorney admitted to practice in Florida may represent himself or herself as guardian or personal representative.

(b) Limiting Appearance. An attorney of record for an interested person in a proceeding governed by these rules shall be the attorney of record in all other proceedings in the administration of the same estate or guardianship, except service of process in an independent action on a claim, unless

(1) at the time of appearance the attorney files a notice specifically limiting the attorney's appearance only to the particular proceeding or matter in which the attorney appears, or

(2) the court orders otherwise.

(c) Withdrawal or Limiting Appearance. An attorney of record may withdraw or limit the attorney's appearance with approval of the court, after filing a motion setting forth the reasons and serving a copy on the client and interested persons.

Committee Notes

The appearance of an attorney in an estate is a general appearance unless (i) specifically limited at the time of such appearance or (ii) the court orders otherwise. This rule does not affect the right of a party to employ additional attorneys who, if members of The Florida Bar, may appear at any time.

Rule History

1975 Revision: Subdivision (a) is same as prior rule 5.040 with added provision for withdrawal of attorney similar to Florida Rule of Appellate Procedure 2.3(d)(2). Subdivision (b) reflects ruling in case of State ex rel. Falkner v. Blanton, 297 So. 2d 825 (Fla. 1974).

1977 Revision: Editorial change requiring filing of petition for withdrawal

and service of copy upon interested persons. Editorial change in citation forms in rule and committee note.

1984 Revision: Minor editorial changes and addition of subdivision (c). Committee notes expanded.

1988 Revision: Editorial changes and order of subdivisions rearranged. Committee notes expanded. Citation form changes in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

2003 Revision: Committee notes revised.

2005 Revision: Committee notes revised.

2006 Revision: Committee notes revised.

Statutory References

§ 731.301, Fla. Stat. Notice.

§ 733.106, Fla. Stat. Costs and attorney's fees.

§ 733.212, Fla. Stat. Notice of administration; filing of objections.

§ 733.6175, Fla. Stat. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.

§ 744.108, Fla. Stat. Guardian's and attorney's fees and expenses.

Rule References

Fla. Prob. R. 5.041(b) Service of pleadings and papers.

Fla. Prob. R. 5.110(b), (c) Resident agent.

Fla. R. Jud. Admin. 2.060505 Attorneys.

Fla. R. App. P. 9.440 Attorneys.

RULE 5.040. NOTICE

(a) Formal Notice.

(1) When formal notice is given, a copy of the pleading or motion shall be served on interested persons, together with a notice requiring the person served to serve written defenses on the person giving notice within 20 days after service of the notice, exclusive of the day of service, and to file the original of the written defenses with the clerk of the court either before service or immediately thereafter, and notifying the person served that failure to serve written defenses as required may result in a judgment or order for the relief demanded in the pleading or motion, without further notice.

(2) After service of formal notice, informal notice of any hearing on the pleading or motion shall be served on interested persons, provided that if no written defense is served within 20 days after service of formal notice on an interested person, the pleading or motion may be considered ex parte as to that person, unless the court orders otherwise.

(3) Formal notice shall be served:

(A) by sending a copy by any commercial delivery service requiring a signed receipt or by any form of mail requiring a signed receipt as follows:

(i) to the attorney representing an interested person; or

(ii) to an interested person who has filed a request for notice at the address given in the request for notice; or

(iii) to an incapacitated person to the person's usual place of abode and to the person's legal guardian, if any, at the guardian's usual place of abode or regular place of business; or, if there is no legal guardian, to the incapacitated person at the person's usual place of abode and on the person, if any, having care or custody of the incapacitated person at the usual place of abode or regular place of business of such custodian; or

(iv) on any other individual to the individual's usual place of abode or to the place where the individual regularly conducts business; or

(v) on a corporation or other business entity to its registered office in Florida or its principal business office in Florida or, if neither is known after reasonable inquiry, to its last known address; or

(B) as provided in the Florida Rules of Civil Procedure for service of process; or

(C) as otherwise provided by Florida law for service of process.

(4) Service of formal notice pursuant to subdivision (3)(A) shall be complete on receipt of the notice. Proof of service shall be by verified statement of the person giving the notice; and there shall be attached to the verified statement the signed receipt or other evidence satisfactory to the court that delivery was made to the addressee or the addressee's agent.

(5) If service of process is made pursuant to Florida law, proof of service shall be made as provided therein.

(b) Informal Notice. When informal notice of a petition or other proceeding is required or permitted, it shall be served as provided in rule 5.041(b).

(c) "Notice" Defined. In these rules, the Florida Probate Code, and the Florida Guardianship Law "notice" shall mean informal notice unless formal notice is specified.

(d) Formal Notice Optional. Formal notice may be given in lieu of informal notice at the option of the person giving notice unless the court orders otherwise. When formal notice is given in lieu of informal notice, formal notice shall be given to all interested persons entitled to notice.

Committee Notes

Formal notice is the method of service used in probate proceedings and the method of service of process for obtaining jurisdiction over the person receiving the notice.

Informal notice is the method of service of notice given to interested persons entitled to notice when formal notice is not given or required.

Reference in this rule to the terms “mail” or “mailing” refers to use of the United States Postal Service.

Rule History

1975 Revision: Implements section 731.301, Florida Statutes.

1977 Revision: Reference to elisor.

1980 Revision: Editorial changes. Clarification of time for filing defenses after formal notice. Authorizes court to give relief to delinquent respondent from ex parte status; relief from service on numerous persons; allows optional use of formal notice.

1984 Revision: Editorial changes. Eliminates deadline for filing as opposed to serving defenses after formal notice; defines procedure subsequent to service of defenses after formal notice; new requirements for service of formal notice on incompetents and corporations; defines when service of formal notice is deemed complete; provisions relating to method of service of informal notice transferred to new rules 5.041 and 5.042; eliminates waiver of notice by will.

1988 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

1991 Revision: Subdivision (b) amended to define informal notice more clearly.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

1996 Revision: Subdivision (a) amended to permit service of formal notice by commercial delivery service to conform to 1993 amendment to section 731.301(1), Florida Statutes. Editorial changes.

2001 Revision: Editorial changes in subdivision (a)(3)(A) to clarify requirements for service of formal notice.

2003 Revision: Committee notes revised.

2005 Revision: Subdivision (a)(3)(A) amended to delete requirement of court approval of commercial delivery service.

2006 Revision: Committee notes revised.

Statutory References

§ 1.01(3), Fla. Stat. Definitions.
ch. 48, Fla. Stat. Process and service of process.
ch. 49, Fla. Stat. Constructive service of process.
§ 731.105, Fla. Stat. In rem proceeding.
§ 731.201(16), (20), Fla. Stat. General definitions.
§ 731.301, Fla. Stat. Notice.
§ 733.212, Fla. Stat. Notice of administration; filing of objections.
§ 733.2123, Fla. Stat. Adjudication before issuance of letters.
§ 733.502, Fla. Stat. Resignation of personal representative.
§ 733.613, Fla. Stat. Personal representative's right to sell real property.
§ 733.6175, Fla. Stat. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.
§ 733.901, Fla. Stat. Final discharge.
§ 744.106, Fla. Stat. Notice.
§ 744.3201, Fla. Stat. Petition to determine incapacity.
§ 744.331, Fla. Stat. Procedures to determine incapacity.
§ 744.3371, Fla. Stat. Notice of petition for appointment of guardian and hearing.
§ 744.441, Fla. Stat. Powers of guardian upon court approval.
§ 744.447, Fla. Stat. Petition for authorization to act.
§ 744.477, Fla. Stat. Proceedings for removal of a guardian.

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.
Fla. Prob. R. 5.030 Attorneys.
Fla. Prob. R. 5.041 Service of pleadings and papers.
Fla. Prob. R. 5.042 Time.
Fla. Prob. R. 5.060 Request for notices and copies of pleadings.
Fla. Prob. R. 5.180 Waiver and consent.
Fla. Prob. R. 5.560 Petition for appointment of guardian of an incapacitated person.

Fla. R. Jud. Admin. 2.060505Attorneys.
Fla. R. Civ. P. 1.070 Process.
Fla. R. Civ. P. Form 1.902 Summons.

RULE 5.041. SERVICE OF PLEADINGS AND PAPERS

(a) Service; When Required. Unless the court orders otherwise, every petition or motion for an order determining rights of an interested person, and every other pleading or paper filed in the particular proceeding which is the subject matter of such petition or motion, except applications for witness subpoenas, shall be served on interested persons unless these rules, the Florida Probate Code, or the Florida Guardianship Law provides otherwise. No service need be made on interested persons against whom a default has been entered, or against whom the matter may otherwise proceed ex parte, unless a new or additional right or demand is asserted.

(b) Service; How Made. When service is required or permitted to be made on an interested person represented by an attorney, service shall be made on the attorney unless service on the interested person is ordered by the court. Except when serving formal notice, or when serving a motion, pleading, or other paper in the manner provided for service of formal notice, service shall be made by delivering or mailing a copy of the motion, pleading, or other paper to the attorney or interested person at the last known address or, if no address is known, leaving it with the clerk of the court. Service by mail shall be complete upon mailing except when serving formal notice or when making service in the manner of formal notice. Delivery of a copy within this rule shall be complete upon

(1) handing it to the attorney or to the interested person; or

(2) leaving it at the attorney's or interested person's office with a clerk or other person in charge thereof; or

(3) if there is no one in charge, leaving it in a conspicuous place therein; or

(4) if the office is closed or the person to be served has no office, leaving it at the person's usual place of abode with some person of his or her family above 15 years of age and informing that person of the contents; or

(5) transmitting it by facsimile to the attorney's or interested person's office with a cover sheet containing the sender's name, firm, address, telephone number, facsimile number, and the number of pages transmitted. When delivery is made by facsimile, a copy shall also be served by any other

method permitted by this rule. Facsimile delivery occurs when transmission is complete.

Service by delivery after 4:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday, or legal holiday.

(c) Service; Numerous Interested Persons. In proceedings when the interested persons are unusually numerous, the court may regulate the service contemplated by these rules on motion or on its initiative in a manner as may be found to be just and reasonable.

(d) Filing. All original papers shall be filed either before service or immediately thereafter. If the original of any bond or other paper is not placed in the court file, a certified copy shall be so placed by the clerk.

(e) Filing With Court Defined. The filing of papers with the court as required by these rules shall be made by filing them with the clerk, except that the judge may permit the papers to be filed with the judge in which event the judge shall note the filing date and transmit the papers to the clerk. The date of filing is that shown on the face of each paper by the judge's notation or the clerk's time stamp, whichever is earlier.

(f) Certificate of Service. When any attorney shall certify in substance:

"I certify that a copy hereof has been served on (here insert name or names) by (delivery) (mail) (fax) on (date).

Attorney"

the certificate shall be taken as prima facie proof of service in compliance with these rules except in case of formal notice or service in the manner of formal notice. A person not represented by an attorney shall certify in the same manner, but the certificate must be verified.

(g) Service of Orders.

(1) A copy of all orders or judgments determining rights of an interested person shall be transmitted by the court or under its direction at the time of entry of the order or judgment to all interested persons in the particular

proceeding.

(2) This subdivision (g) is directory, and a failure to comply with it does not affect the order or judgment or its finality.

Committee Notes

Derived from Florida Rule of Civil Procedure 1.080. Regulates the service of pleadings and papers in proceedings on petitions or motions for determination of rights. It is not applicable to every pleading and paper served or filed in the administration of a guardianship or decedent's estate.

Rule History

1984 Revision: New rule. Subdivision (c) is same as former rule 5.040(d).

1988 Revision: Committee notes revised. Citation form changes in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

1996 Revision: Subdivision (b) amended to allow service to be made by facsimile. Committee notes revised.

2000 Revision: Subdivision (b) amended to clarify requirements for service of pleadings and papers. Subdivision (e) amended to clarify date of filing. Editorial changes in subdivision (f).

2003 Revision: Committee notes revised.

2005 Revision: Changes in subdivisions (b) and (f) to clarify service requirements, and editorial changes in (e).

2006 Revision: Committee notes revised.

Statutory References

§ 731.201, Fla. Stat. General definitions.

§ 731.301, Fla. Stat. Notice.

§ 733.212, Fla. Stat. Notice of administration; filing of objections.
§ 733.2123, Fla. Stat. Adjudication before issuance of letters.
§ 733.705(2), (4), Fla. Stat. Payment of and objection to claims.
§ 744.3201, Fla. Stat. Petition to determine incapacity.
§ 744.331, Fla. Stat. Procedures to determine incapacity.
§ 744.3371, Fla. Stat. Notice of petition for appointment of guardian and hearing.
§ 744.447, Fla. Stat. Petition for authorization to act.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.
Fla. Prob. R. 5.025 Adversary proceedings.
Fla. Prob. R. 5.030 Attorneys.
Fla. Prob. R. 5.040 Notice.
Fla. Prob. R. 5.042 Time.
Fla. Prob. R. 5.150(c) Order requiring accounting.
Fla. Prob. R. 5.180(a)(1) Waiver and consent.
Fla. Prob. R. 5.240(a) Notice of administration.
Fla. Prob. R. 5.340(d) Inventory.
Fla. Prob. R. 5.550 Petition to determine incapacity.
Fla. Prob. R. 5.560 Petition for appointment of guardian of an incapacitated person.
Fla. R. Civ. P. 1.080 Service of pleadings and papers.
Fla. R. Jud. Admin. 2.060 505 Attorneys.

RULE 5.080. DISCOVERY AND SUBPOENA

(a) Adoption of Civil Rules. The following Florida Rules of Civil Procedure shall apply in all probate and guardianship proceedings:

- (1) Rule 1.280, general provisions governing discovery.
- (2) Rule 1.290, depositions before action or pending appeal.
- (3) Rule 1.300, persons before whom depositions may be taken.
- (4) Rule 1.310, depositions upon oral examination.
- (5) Rule 1.320, depositions upon written questions.
- (6) Rule 1.330, use of depositions in court proceedings.
- (7) Rule 1.340, interrogatories to parties.
- (8) Rule 1.350, production of documents and things and entry upon land for inspection and other purposes.
- (9) Rule 1.351, production of documents and things without deposition.
- (10) Rule 1.360, examination of persons.
- (11) Rule 1.370, requests for admission.
- (12) Rule 1.380, failure to make discovery; sanctions.
- (13) Rule 1.390, depositions of expert witnesses.
- (14) Rule 1.410, subpoena.

(b) Limitations and Costs. In order to conserve the assets of the estate, the court has broad discretion to limit the scope and the place and manner of the discovery and to assess the costs, including attorneys' fees, of the discovery against the party making it or against 1 or more of the beneficiaries of the estate or against the ward in such proportions as the court determines, considering, among other factors, the benefit derived therefrom.

(c) Application. It is not necessary to have an adversary proceeding under

rule 5.025 to utilize the rules adopted in subdivision (a) above. Any interested person may utilize the rules adopted in subdivision (a).

Committee Notes

Subdivision (b) is not intended to result in the assessment of costs, including attorney's fees, in every instance in which discovery is sought. Subdivision (c) is not intended to overrule the holdings in *In re Estate of Shaw*, 340 So. 2d 491 (Fla. 3d DCA 1976), and *In re Estate of Posner*, 492 So. 2d 1093 (Fla. 3d DCA 1986).

Rule History

1975 Revision: This rule is the same as prior rule 5.080, broadened to include guardianships and intended to clearly permit the use of discovery practices in nonadversary probate and guardianship matters.

1977 Revision: Editorial change in citation form in committee note.

1984 Revision: Florida Rules of Civil Procedure 1.290, 1.300, 1.351, and 1.410 have been added.

1988 Revision: Subdivision (a)(15) deleted as duplicative of rule 5.070 Subpoena. Editorial change in (b). Citation form change in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

1996 Revision: Reference to rule 1.400 eliminated because of deletion of that rule from the Florida Rules of Civil Procedure. Editorial change.

2002 Revision: Reference to rule 1.410 transferred to subdivision (a) from former rule 5.070. Subdivision (b) amended to give court discretion to assess attorneys' fees. Subdivision (c) added. Committee notes revised.

2006 Revision: Committee notes revised.

Statutory References

§ 731.201(21), Fla. Stat. General definitions.

§ 733.106, Fla. Stat. Costs and attorney's fees.

§ 744.105, Fla. Stat. Costs.

§ 744.108, Fla. Stat. Guardian's and attorney's fees and expenses.

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. R. Jud. Admin. 2.070535 Court reporting.

RULE 5.120. ADMINISTRATOR AD LITEM AND GUARDIAN AD LITEM

(a) Appointment. When it is necessary that the estate of a decedent or a ward be represented in any probate or guardianship proceeding and there is no personal representative of the estate or guardian of the ward, or the personal representative or guardian is or may be interested adversely to the estate or ward, or is enforcing the personal representative's or guardian's own debt or claim against the estate or ward, or the necessity arises otherwise, the court may appoint an administrator ad litem or a guardian ad litem, as the case may be, without bond or notice for that particular proceeding. At any point in a proceeding, a court may appoint a guardian ad litem to represent the interests of an incapacitated person, an unborn or unascertained person, a minor or any other person otherwise under a legal disability, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The administrator ad litem or guardian ad litem shall file an oath to discharge all duties faithfully and upon the filing shall be qualified to act. No process need be served upon the administrator ad litem or guardian ad litem, but such person shall appear and defend as directed by the court.

(b) Petition. The petition for appointment of a guardian ad litem shall state to the best of petitioner's information and belief:

(1) the name and residence address of each minor or incapacitated person and birth date of each minor who has an interest in the proceedings;

(2) the name and address of any guardian appointed for each minor or incapacitated person;

(3) the name and residence address of any living natural guardians or living natural guardian having legal custody of each minor or incapacitated person;

(4) a description of the interest in the proceedings of each minor or incapacitated person; and

(5) the facts showing the necessity for the appointment of a guardian ad

litem.

(c) Notice. Within 10 days after appointment, the petitioner shall deliver or mail conformed copies of the petition for appointment of a guardian ad litem and order to any guardian, or if there is no guardian, to the living natural guardians or the living natural guardian having legal custody of the minor or incapacitated person.

(d) Report. The guardian ad litem shall deliver or mail conformed copies of any written report or finding of the guardian ad litem's investigation and answer filed in the proceedings, petition for compensation and discharge, and the notice of hearing on the petition to any guardian, or in the event that there is no guardian, to the living natural guardians or the living natural guardian having legal custody of the minor or incapacitated person.

(e) Service of Petition and Order. Within 10 days after appointment, the petitioner for an administrator ad litem shall deliver or mail conformed copies of the petition for appointment and order to the attorney of record of each beneficiary and to each known beneficiary not represented by an attorney of record.

(f) Enforcement of Judgments. When an administrator ad litem or guardian ad litem recovers any judgment or other relief, it shall be enforced as other judgments. Execution shall issue in favor of the administrator ad litem or guardian ad litem for the use of the estate or ward and the money collected shall be paid to the personal representative or guardian, or as otherwise ordered by the court.

(g) Claim of Personal Representative. The fact that the personal representative is seeking reimbursement for claims against the decedent paid by the personal representative does not require appointment of an administrator ad litem.

Committee Notes

Rule History

1977 Revision: Editorial change in (a) limiting application of rule to probate and guardianship proceedings. In (b) the petition for appointment of a guardian need not be verified. Deletion of (g) as being substantive rather

than procedural and changing former (h) to new (g). Change in committee note to conform to statutory renumbering.

This rule implements sections 731.303(5), 733.308, and 744.391, Florida Statutes, and includes some of the provisions of prior rule 5.230.

1988 Revision: Editorial changes; captions added to paragraphs. Citation form changes in committee notes.

1992 Revision: Addition of phrase in subdivision (a) to conform to 1992 amendment to section 731.303(5), Florida Statutes. Editorial changes. Committee notes revised. Citation form changes in committee notes.

2003 Revision: Committee notes revised.

2006 Revision: Committee notes revised.

Statutory References

§ 731.303, Fla. Stat. Representation.

§ 733.308, Fla. Stat. Administrator ad litem.

§ 733.708, Fla. Stat. Compromise.

~~§ 744.301, Fla. Stat. Natural guardians.~~

§ 744.3025, Fla. Stat. Claims of minors.

§ 744.387, Fla. Stat. Settlement of claims.

§ 744.391, Fla. Stat. Actions by and against guardian or ward.

§ 744.446, Fla. Stat. Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty.

RULE 5.180. WAIVER AND CONSENT

~~(a) **Waiver.** An interested person, including a guardian ad litem, administrator ad litem, guardian of the property, or, if none, the natural guardian, personal representative, trustee, or other fiduciary, or a sole holder or all co-holders of a power of revocation or a power of appointment, may in writing~~

~~(1) waive:~~

~~(A) formal notice;~~

~~(B) informal notice;~~

~~(C) service including service of notice of administration;~~

~~(D) disclosure of the amount of compensation either paid to or to be paid to the personal representatives, attorneys, accountants, appraisers, or other agents employed by the personal representative;~~

~~(E) disclosure of prior or proposed distribution of assets;~~

~~(F) any right or notice or the filing of any document, exhibit, or schedule required to be filed;~~

~~(G) any other proceedings or matters permitted to be waived by law or by these rules; and~~

~~(2) waive or consent on the person's own behalf and on behalf of those the person represents to the extent there is no conflict of interest.~~

(a) Manner of Execution. A waiver or consent as authorized by law shall be in writing and signed by the person executing the waiver or consent.

(b) Contents of Waiver. ~~A waiver of disclosure of the amount of, or manner of determining, compensation shall be signed by each party bearing the impact of the compensation and shall be filed with the court. The waiver shall contain~~The waiver or consent shall state:

(1) the person's interest in the subject of the waiver or consent;

(2) if the person is signing in a fiduciary or representative capacity, the nature of the capacity;

(3) expressly what is being waived or consented to; and

(4) if the waiver pertains to compensation, language declaring that the waiving party has actual knowledge of the amount and manner of determining the compensation and, in addition, either:

—(1)(A) that the party has agreed to the amount and manner of determining that compensation and waives any objection to payment; or

—(2)(B) that the party has the right to petition the court to ~~decrease~~ determine the compensation and waives that right.

(c) Filing. The waiver or consent shall be filed.

Committee Notes

One person who serves in two fiduciary capacities may not waive or consent to the person's acts without the approval of those whom the person represents. This rule represents a rule implementation of the procedure found in section 731.302, Florida Statutes.

Rule History

1977 Revision: Extends right of waiver to natural guardian; clarifies right to waive service of notice of administration.

1984 Revision: Extends waiver to disclosure of compensation and distribution of assets. Committee notes revised.

1988 Revision: Procedure from section 731.302, Florida Statutes, inserted as new (1)(f), and a new requirement that the waiver be in writing has been added. Editorial changes. Committee notes expanded. Citation form changes in committee notes.

1992 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

1996 Revision: Addition of specific fee waiver disclosure requirements found in § 733.6171(9), Florida Statutes, and expanded to cover all fees. Committee notes revised.

2003 Revision: Committee notes revised.

2006 Revision: Rule extensively amended to remove references to interested persons' right to waive or consent, which is governed by section 731.302, Florida Statutes, and to address manner of execution and contents of waiver. Committee notes revised.

Statutory References

§ 731.302, Fla. Stat. Waiver and consent by interested person.
§ 731.303, Fla. Stat. Representation.
§ 733.6171, Fla. Stat. Compensation of attorney for the personal representative.
~~§ 733.901, Fla. Stat. Final discharge.~~
~~ch. 737, Fla. Stat. Trust administration.~~
~~§ 744.301, Fla. Stat. Natural guardians.~~

~~Rule References~~

~~Fla. Prob. R. 5.120 Administrator ad litem and guardian ad litem.~~
~~Fla. Prob. R. 5.400 Distribution and discharge.~~
~~Fla. Prob. R. 5.680 Termination of guardianship.~~
~~Fla. Prob. R. 5.695 Annual guardianship report.~~

RULE 5.550. PETITION TO DETERMINE INCAPACITY

(a) Contents. The petition to determine incapacity shall be verified by the petitioner and shall state:

- (1) the name, age, and present address of the petitioner and the petitioner's relationship to the alleged incapacitated person;
- (2) the name, age, county of residence, and present address of the alleged incapacitated person, and specify the primary language spoken by the alleged incapacitated person, if known;
- (3) that the petitioner believes the alleged incapacitated person to be incapacitated, the facts on which such belief is based, and the names and addresses of all persons known to the petitioner who have knowledge of such facts through personal observation;
- (4) the name and address of the alleged incapacitated person's attending or family physician, if known;
- (5) which rights the alleged incapacitated person is incapable of exercising to the best of the petitioner's knowledge; and, if the petitioner has insufficient experience to make that judgment, the petitioner shall so indicate;
- (6) whether plenary or limited guardianship is sought for the alleged incapacitated person; and
- (7) the names, relationships, and addresses of the next of kin of the alleged incapacitated person, specifying the dates of birth of any who are minors, to the extent known to the petitioner.

(b) Notice.

(1) Contents. The notice of filing the petition to determine incapacity shall state:

- (A) the time and place of the hearing to inquire into the capacity of the alleged incapacitated person;
- (B) that an attorney has been appointed to represent such person; and
- (C) that if the court determines that such person is incapable of exercising any of the rights enumerated in the petition a guardian may be appointed.

(2) Service on Alleged Incapacitated Person. The notice and a copy of the petition to determine incapacity shall be personally served by an elisor appointed by the court, who may be the court appointed counsel for the alleged incapacitated person. The elisor shall read the notice to the alleged incapacitated person, but need not read the petition. A return of service shall be filed by the elisor certifying that the notice and petition have been served on and the notice read to the alleged incapacitated person. No responsive pleading is required and no default may be entered for failure to file a responsive pleading. The allegations of the petition are deemed denied.

(3) Service on Others. A copy of the petition and the notice shall also be served on counsel for the alleged incapacitated person, and on all next of kin.

(c) Verified Statement. An interested person may file a verified statement that shall state:

(1) that he or she has a good faith belief that the alleged incapacitated person's trust, trust amendment, or durable power of attorney is invalid; and

(2) facts constituting a reasonable basis for that belief.

(d) Order. When an order determines that a person is incapable of exercising delegable rights, it shall specify whether there is an alternative to guardianship that will sufficiently address the problems of the incapacitated person.

Committee Notes

Rule History

1980 Revision: Implements 1979 amendments to section 744.331, Florida Statutes.

1984 Revision: Change in title of rule. Editorial changes and adds a provision for service of petition. Committee notes revised.

1988 Revision: Committee notes revised. Citation form changes in committee notes.

1989 Revision by Ad Hoc Committee: The committee realized that formal notice as defined in rule 5.040(a)(1) requires the recipient of notice to file a responsive pleading within 20 days after the service of the notice. The committee believed that to impose such a requirement on the alleged incapacitated person would contravene the legislative intent of the 1989 revisions to chapter 744, Florida Statutes. The committee observed that the time required for appointment of mandatory appointed counsel might render a responsive pleading within 20 days impossible for the alleged incapacitated person. The committee concluded that, procedurally, notice upon the alleged incapacitated person should occur in the same manner as formal notice in rule 5.040, but the required response under that rule should not be imposed upon the alleged incapacitated person.

1991 Revision: Implements 1989 amendments to sections 744.3201 and 744.331, Florida Statutes, and 1990 technical amendments.

1992 Revision: Citation form changes in committee notes.

2006 Revision: Subdivisions (c) and (d) added to incorporate 2006 amendment to section 744.441 and creation of section 744.462, Florida Statutes. Committee notes revised.

Statutory References

§ 744.3201, Fla. Stat. Petition to determine incapacity.
§ 744.331, Fla. Stat. Procedures to determine incapacity.
§ 744.3371, Fla. Stat. Notice of petition for appointment of guardian and hearing.
§ 744.441(11), Fla. Stat. Powers of guardian upon court approval.
§ 744.462, Fla. Stat. Determination regarding alternatives to guardianship.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.
Fla. Prob. R. 5.040(a)(3) Notice.
Fla. Prob. R. 5.800(a) Application of revised chapter 744 to existing guardianships.

RULE 5.552. VOLUNTARY GUARDIANSHIP OF PROPERTY

(a) Petition for Appointment of Guardian. The petition for voluntary guardianship shall be verified by the petitioner and shall state:

- (1) the facts to establish venue;
- (2) the petitioner's residence and post office address;
- (3) that the petitioner although mentally competent is incapable of the care, custody, and management of the petitioner's estate by reason of age or physical infirmity, and is voluntarily petitioning to have a guardian of the petitioner's property appointed;
- (4) whether the guardianship shall apply to all of the petitioner's property or less than all of the petitioner's property; and if less than all of the petitioner's property, the specific property to which the guardianship is to apply;
- (5) the name and residence and post office address of any proposed guardian;
- (6) that the proposed guardian is qualified to serve or that a willing and qualified proposed guardian has not been located; and
- (7) the names and post office addresses of persons to whom the petitioner requests that notice of the hearing for the appointment of the guardian, and any petition for authority to act, be given.

(b) Certificate of Licensed Physician. The petition shall be accompanied by a certificate of a licensed physician as required by law.

(c) Notice of Hearing. Notice of hearing on the petition for appointment, and any petition for authority to act, shall be given to the ward and any person to whom the ward requests notice be given, which request can be made in the petition for appointment or a subsequent written request for notice signed by the ward.

(d) Annual Report. The annual report shall be accompanied by a certificate from a licensed physician as required by law.

(de) Termination. The ward may terminate a voluntary guardianship by filing a notice of termination. Copies of the notice shall be served on all interested persons. The guardian shall file a petition for discharge in accordance with these rules.

Committee Notes

Rule History

2003 Revision: New rule.

2006 Revision: New (d) added to incorporate 2006 amendment to section 744.341, Florida Statutes, requiring inclusion of physician's certificate in annual report, and subsequent subdivision relettered. Committee notes revised.

Statutory Reference

§ 744.341, Fla. Stat. Voluntary guardianship.

Rule Reference

Fla. Prob. R. 5.680 Termination of guardianship.

Fla. Prob. R. 5.695 Annual guardianship report.

RULE 5.555. GUARDIANSHIPS OF MINORS

(a) Application. This rule shall apply to any guardianship for a minor.

(b) Petition to Determine Incapacity. No petition to determine incapacity need be filed.

(c) Petition for Appointment of Guardian. The petition shall be verified by the petitioner and shall state:

(1) the facts to establish venue;

(2) the petitioner's residence and post office address;

(3) the name, age, and residence and post office address of the minor;

(4) the names and addresses of the parents of the minor and if none, the next of kin known to the petitioner;

(5) the name and residence and post office address of the proposed guardian, and that the proposed guardian is qualified to serve; or, that a willing and qualified guardian has not been located;

(6) the proposed guardian's relationship to and any previous association with the minor;

(7) the reasons why the proposed guardian should be appointed; and

(8) the nature and value of the property subject to the guardianship.

(d) Notice. Formal notice of the petition for appointment of guardian shall be served on any parent who is not a petitioner or, if there is no parent, on the persons with whom the minor resides and on such other persons as the court may direct.

(e) Initial and Annual Guardianship Reports.

(1) The initial guardianship report shall consist only of the verified inventory. The annual guardianship report shall consist only of the annual

accounting.

(2) ~~Unless otherwise ordered by the court, the~~ The guardian need not ~~shall~~ file an initial ~~or~~ and annual guardianship plan as required by law.

(3) Unless otherwise ordered by the court or required by law, the guardian need not serve a copy of the initial guardianship report and the annual guardianship reports on the ward ~~if the ward is under the age of 14 years~~.

(f) Inspection of Inventory or Accounting. Unless otherwise ordered by the court for good cause shown, any inventory, amended or supplementary inventory, or accounting is subject to inspection only by the clerk, the ward or the ward's attorney, and the guardian or the guardian's attorney.

Committee Notes

The provisions of chapter 744, Florida Statutes, and the guardianship rules enacted in 1989 leave some uncertainty with respect to the procedural requirements in guardianships for minors who are not incapacitated persons. This rule is intended to address only certain procedures with respect to the establishment and administration of guardianships over minors. The committee believes that certain provisions of the guardianship law and rules apply to both guardianships of minors as well as guardianships of incapacitated persons and no change has been suggested with respect to such rules. Because no adjudication of a minor is required by statute, it is contemplated that appointment of a guardian for a minor may be accomplished without a hearing. Initial and annual guardianship reports for minors have been simplified where all assets are on deposit with a designated financial institution under applicable Florida law.

Rule History

1991 Revision: New rule adopted to apply to guardianships over minors who are not incapacitated persons.

1992 Revision: Committee notes revised. Citation form changes in committee notes.

1996 Revision: Committee notes revised.

2000 Revision: Deletes requirement in subdivision (c) to report social

security number of proposed guardian.

2003 Revision: Deletes requirement in subdivision (c) to report social security number of minor. Committee notes revised.

2006 Revision: Subdivision (e)(2) amended to conform to requirement in sections 744.362(1) and 744.3675, Florida Statutes, to file initial and annual guardianship plans. Subdivision (e)(3) amended to eliminate requirement of service on ward unless ordered by court or required by statute.

Statutory References

§ 69.031, Fla. Stat. Designated financial institutions for assets in hands of guardians, curators, administrators, trustees, receivers, or other officers.

§ 744.3021, Fla. Stat. Guardians of minors.

§ 744.334, Fla. Stat. Petition for appointment of guardian or professional guardian; contents.

§ 744.3371(2), Fla. Stat. Notice of petition for appointment of guardian and hearing.

§ 744.342, Fla. Stat. Minors; guardianship.

§ 744.362, Fla. Stat. Initial guardianship report.

§ 744.363, Fla. Stat. Initial guardianship plan.

§ 744.365, Fla. Stat. Verified inventory.

§ 744.367, Fla. Stat. Duty to file annual guardianship report.

§ 744.3675, Fla. Stat. Annual guardianship plan.

§ 744.3678, Fla. Stat. Annual accounting.

§ 744.3679, Fla. Stat. Simplified accounting procedures in certain cases.

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.541 Recording of hearings.

Fla. Prob. R. 5.560 Petition for appointment of guardian of an incapacitated person.

Fla. Prob. R. 5.620 Inventory.

Fla. Prob. R. 5.636 Settlement of minors' claims.

Fla. Prob. R. 5.690 Initial guardianship report.

RULE 5.560. PETITION FOR APPOINTMENT OF GUARDIAN OF AN INCAPACITATED PERSON

(a) Contents. The petition shall be verified by the petitioner and shall state:

- (1) the facts to establish venue;
- (2) the petitioner's residence and post office address;
- (3) the name, age, and residence and post office address of the alleged incapacitated person;
- (4) the nature of the incapacity, the extent of guardianship, either limited or plenary, requested for the alleged incapacitated person, and the nature and value of property subject to the guardianship;
- (5) the names and addresses of the next of kin of the alleged incapacitated person known to the petitioner;
- (6) the name and residence and post office address of the proposed guardian, and that the proposed guardian is qualified to serve, or that a willing and qualified guardian has not been located;
- (7) the proposed guardian's relationship to and any previous association with the alleged incapacitated person; ~~and~~
- (8) the reasons why the proposed guardian should be appointed;
- (9) whether there are alternatives to guardianship known to the petitioner that may sufficiently address the problems of the alleged incapacitated person in whole or in part; and
- (10) if the proposed guardian is a professional guardian, a statement that the proposed guardian has complied with the registration requirements of section 744.1083, Florida Statutes.

(b) Notice. Notice of filing the petition for appointment of guardian may be served as a part of the notice of filing the petition to determine incapacity, but shall be served a reasonable time before the hearing on the petition or other pleading seeking appointment of a guardian.

(c) Service on Public Guardian. If the petitioner requests appointment of the public guardian, a copy of the petition and the notice shall be served on the public guardian.

Committee Notes

Rule History

1975 Revision: Substantially the same as section 744.334, Florida Statutes, expanded to include provisions of section 744.302, Florida Statutes, and section 744.312, Florida Statutes, by reference.

1977 Revision: Change in committee notes to conform to statutory renumbering.

1980 Revision: Implements 1979 amendment to section 744.334, Florida Statutes.

1984 Revision: Combines rule 5.560 and part of prior rule 5.570. Editorial changes and committee notes revised.

1988 Revision: Editorial changes. Committee notes revised. Citation form changes in committee notes.

1989 Revision by Ad Hoc Committee: Subdivision (a)(4) of the former rule has been deleted altogether because the date and court of adjudication will probably not be known at the time of filing the petition for the appointment since petition for appointment will henceforth be filed contemporaneously with the petition to determine incapacity.

1991 Revision: Implements 1989 amendments to sections 744.334 and 744.331(1), Florida Statutes, and 1990 technical amendments. Subdivision (c)(1) deleted because rule 5.555(d) addresses service on parents.

1992 Revision: Citation form changes in committee notes.

1996 Revision: Deletes requirement in subdivision (a) to report social security number of alleged incapacitated person. Adds provision to subdivision (b) for notice before hearing when petition is not served simultaneously with petition to determine incapacity.

2000 Revision: Deletes requirement in subdivision (a) to report social security number of proposed guardian.

2003 Revision: Committee notes revised.

2006 Revision: New (a)(9) added to incorporate 2006 passage of section 744.462, Florida Statutes. Subdivision (a)(10) added to implement section

744.1083, Florida Statutes. Committee notes revised.

Statutory References

§ 744.1083, Fla. Stat. Professional guardian registration.

§ 744.309, Fla. Stat. Who may be appointed guardian of a resident ward.

§ 744.312, Fla. Stat. Considerations in appointment of guardian.

§ 744.331, Fla. Stat. Procedures to determine incapacity.

§ 744.334, Fla. Stat. Petition for appointment of guardian or professional guardian; contents.

§ 744.3371(1), Fla. Stat. Notice of petition for appointment of guardian and hearing.

§ 744.341, Fla. Stat. Voluntary guardianship.

§ 744.344, Fla. Stat. Order of appointment.

§ 744.462, Fla. Stat. Determination regarding alternatives to guardianship.

§ 744.703, Fla. Stat. Office of public guardian; appointment, notification.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.550 Petition to determine incapacity.

**RULE 5.590. APPLICATION FOR APPOINTMENT AS GUARDIAN;
DISCLOSURE STATEMENT; FILING**

(a) Individual Applicants.

(1) The application for appointment shall contain:

(A) the applicant's qualifications to serve as a guardian; and

(B) the names of all wards for whom the applicant is then acting as guardian, the court file number and circuit court in which each case is pending, and a statement as to whether the applicant is acting as a limited or plenary guardian of the person or property, or both, of each ward.

(2) The application for appointment shall be filed and served a reasonable time before the hearing on the appointment of a guardian.

(b) Nonprofit Corporate Guardians.

(1) No application for appointment shall be required of a nonprofit corporate guardian.

(2) A disclosure statement shall contain:

(A) the corporation's qualifications to serve as a guardian; and

(B) the names of all wards for whom the corporation is then acting as guardian, the court file number and circuit court in which each case is pending, and a statement as to whether the corporation is acting as a limited or plenary guardian of the person or property, or both, of each ward.

(3) The disclosure statement of a nonprofit corporate guardian shall be filed quarterly with the clerk of the court for each circuit in which the corporation has been appointed, or is seeking appointment, as guardian.

(c) For Profit Corporations and Associations. No application for appointment or disclosure statement shall be required of any for profit corporation or association authorized to exercise fiduciary powers under Florida law.

(d) Public Guardians. No application for appointment or disclosure statement shall be required of a public guardian.

Committee Notes

Rule History

1988 Revision: Prior rule deleted; text of rule moved to rule 5.650.

1989 Revision: Rule reactivated with different title and text.

1991 Revision: Implements 1989 and 1990 amendments to section 744.3125, Florida Statutes.

1992 Revision: Citation form change in committee notes.

1996 Revision: Adds filing and service provisions consistent with rule 5.560. Corrects reference to corporations qualified to exercise fiduciary powers. Editorial changes. Adds statutory references.

2003 Revision: Committee notes revised.

2006 Revision: Committee notes revised.

Statutory References

§ 744.102(34), (~~1314~~), Fla. Stat. Definitions.

§ 744.309, Fla. Stat. Who may be appointed guardian of a resident ward.

§ 744.3125, Fla. Stat. Application for appointment.

§ 744.331(1), Fla. Stat. Procedures to determine incapacity.

§ 744.3371, Fla. Stat. Notice of petition for appointment of guardian and hearing.

RULE 5.625. NOTICE OF COMPLETION OF GUARDIAN EDUCATION REQUIREMENTS

(a) Filing. Unless the guardian education requirement is waived by the court, each guardian, other than a professional guardian, shall file with the court within ~~1-year~~4 months after the issuance of letters of guardianship a notice of completion of guardian education requirements.

(b) Content. The notice shall state:

(1) that the guardian has completed the required number of hours of course instruction and training covering the legal duties and responsibilities of a guardian, the rights of a ward, the availability of local resources to aid a ward, and the preparation of habilitation plans and annual guardianship reports, including accountings;

(2) the date the course was completed;

(3) the name of the course completed; and

(4) the name of the entity or instructor that taught the course.

(c) Verification. The notice shall be verified by the guardian.

Committee Notes

Rule History

2005 Revision: New rule.

2006 Revision: Subdivision (a) amended to conform to 2006 amendment to section 744.3145(4), Florida Statutes.

Statutory Reference

§ 744.3145, Fla. Stat. Guardian education requirements.

RULE 5.630. PETITION FOR APPROVAL OF ACTS

(a) Contents. When authorization or confirmation of any act of the guardian is required, application shall be made by verified petition stating the facts showing:

- (1) the expediency or necessity for the action;
- (2) a description of any property involved;
- (3) the price and terms of any sale, mortgage, or other contract;
- (4) whether the ward has been adjudicated incapacitated to act with respect to the rights to be exercised; ~~and~~
- (5) whether the action requested conforms to the guardianship plan; and
- (6) the basis for the relief sought.

(b) Notice. No notice of a petition to authorize sale of perishable personal property or of property rapidly deteriorating shall be required. Notice of a petition to perform any other act requiring a court order shall be given to the ward, to the next of kin, if any, and to those persons who have filed requests for notices and copies of pleadings.

(c) Order.

(1) If the act is authorized or confirmed, the order shall describe the permitted act and authorize the guardian to perform it or confirm its performance.

(2) If a sale or mortgage is authorized or confirmed, the order shall describe the property. If a sale is to be private, the order shall specify the price and the terms of the sale. If a sale is to be public, the order shall state that the sale shall be made to the highest bidder and that the court reserves the right to reject all bids.

(3) If the guardian is authorized to bring an action to contest the validity of all or part of a revocable trust, the order shall contain a finding that the

action appears to be in the ward's best interests during the ward's probable lifetime. If the guardian is not authorized to bring such an action, the order shall contain a finding concerning the continued need for a guardian and the extent of the need for delegation of the ward's rights.

Committee Notes

Rule History

1975 Revision: Substantially the same as sections 744.503, 744.447, and 744.451, Florida Statutes, with editorial changes.

1977 Revision: Change in statutory reference in rule and in committee note to conform to statutory renumbering.

1980 Revision: Implements 1979 amendment to section 744.447(2), Florida Statutes.

1988 Revision: Editorial changes; captions added to subdivisions. Committee notes revised. Citation form changes in rule and committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Changes to conform to 1989 revised guardianship law.

1992 Revision: Committee notes revised. Citation form changes in committee notes.

2006 Revision: New (a)(6) added to incorporate 2006 amendment to section 744.441, Florida Statutes. New (c)(3) added to reflect passage of 2006 amendment to section 737.2065, Florida Statutes. Committee notes revised.

Statutory References

§ 736.207, Fla. Stat. Trust contests.

§ 737.2065, Fla. Stat. Trust contests.

§ 744.3215, Fla. Stat. Rights of persons determined incapacitated.

§ 744.441, Fla. Stat. Powers of guardian upon court approval.
§ 744.447, Fla. Stat. Petition for authorization to act.
§ 744.451, Fla. Stat. Order.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.
Fla. Prob. R. 5.025 Adversary proceedings.
Fla. Prob. R. 5.040 Notice.
Fla. Prob. R. 5.041 Service of pleadings and papers.
Fla. Prob. R. 5.060 Request for notices and copies of pleadings.
Fla. Prob. R. 5.610 Execution by guardian.
Fla. Prob. R. 5.636 Settlement of minors' claims.

RULE 5.636. SETTLEMENT OF MINORS' CLAIMS

(a) Time of Settlement. Claims on behalf of minors may be settled either before or after an action is filed.

(b) Petition. The petition for approval of a settlement shall contain:

- (1) the name, residence address, and date of birth of the minor;
- (2) the name and address of any guardian appointed for the minor;
- (3) the name and residence address of the natural guardians or other persons having legal custody of the minor;
- (4) a statement disclosing the interests of any natural or court-appointed guardian whose interest may be in conflict with that of the minor;
- (5) a description of the cause of action in which the minor's interest arises;
- (6) a summary of the terms of the proposed settlement; and
- (7) copies of all agreements, releases, or other documents to be executed on behalf of the minor.

(c) Notice. Notice of the petition shall be given to the court-appointed guardians for the minor, to the natural guardians or other persons with legal custody of the minor, to the minor if age 14 or older, and to the minor's next of kin if required by the court.

(d) Guardian Ad Litem. The court shall appoint a guardian ad litem on behalf of a minor, without bond or notice, with respect to any proposed settlement that exceeds ~~\$25,000~~50,000 and affects the interests of the minor, if:

- (1) there is no court-appointed guardian of the minor;
- (2) the court-appointed guardian may have an interest adverse to the minor; or
- (3) the court determines that representation of the minor's interest is otherwise inadequate.

(e) Valuation of Proposed Settlement. A proposed settlement is deemed to exceed ~~\$25,000~~50,000 if the gross amount payable exceeds ~~\$25,000~~50,000, without reduction to reflect present value or fees and costs.

(f) Report. A guardian ad litem appointed with respect to a proposed settlement affecting the interests of a minor shall, not later than 5 days prior

to the hearing on a petition for order authorizing settlement, file and serve a report indicating the guardian ad litem's determination regarding whether the proposed settlement will be in the best interest of the minor. The report shall include:

(1) a statement of the facts of the minor's claim and the terms of the proposed settlement, including any benefits to any persons or parties with related claims;

(2) a list of the persons interviewed and documents reviewed by the guardian ad litem in evaluating the minor's claim and proposed settlement; and

(3) the guardian ad litem's analysis of whether the proposed settlement will be in the best interest of the minor.

A copy of the report shall be served on those persons on whom service is required in subdivision (c) of this rule.

Committee Notes

When a civil action is pending, the petition for approval of settlement should be filed in that civil action. In all other circumstances, the petition for approval of settlement should be filed in the same court and assigned to a judge who would preside over a petition for appointment of guardian of a minor.

The total settlement to be considered under subdivisions (d) and (e) is not limited to the amounts received only by the minor, but includes all settlement payments or proceeds received by all parties to the claim or action. For example, the proposed settlement may have a gross value of ~~\$30,000~~60,000, with ~~\$15,000~~30,000 payable to the minor and ~~\$15,000~~30,000 payable to another party. In that instance the total proposed settlement exceeds ~~\$25,000~~50,000. Further, the "gross amount payable" under subdivision (e) is the total sum payable, without reducing the settlement amount by fees and costs that might be paid from the proceeds of the settlement. For example, if the proposed settlement is ~~\$30,000~~60,000 but ~~\$10,000~~20,000 of that sum will be paid to the attorneys representing the minor's interest in the action, the "gross amount payable" still exceeds ~~\$25,000~~50,000. Likewise, the "gross amount payable" cannot be reduced to

reflect the present value of the proposed settlement on behalf of the minor.

Rule History

1992 Revision: New rule.

2003 Revision: Committee notes revised.

2006 Revision: Amended to reflect 2006 passage of new section 744.3025, Claims of Minors, increasing dollar figure from \$25,000 to \$50,000 as threshold amount requiring appointment of guardian ad litem if interests of minor are not otherwise adequately represented. Committee notes revised.

Statutory References

~~§ 744.301, Fla. Stat. Natural guardians.~~

§ 744.3025, Fla. Stat. Claims of minors.

§ 744.387, Fla. Stat. Settlement of claims.

§ 744.391, Fla. Stat. Actions by and against guardian or ward.

§ 744.441, Fla. Stat. Powers of guardian upon court approval.

§ 744.446, Fla. Stat. Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty.

§ 744.447, Fla. Stat. Petition for authorization to act.

§ 768.23, Fla. Stat. Protection of minors and incompetents.

§ 768.25, Fla. Stat. Court approval of settlements.

Rule References

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.042 Time.

Fla. Prob. R. 5.120 Administrator ad litem and guardian ad litem.

Fla. Prob. R. 5.610 Execution by guardian.

Fla. Prob. R. 5.630 Petition for approval of acts.

RULE 5.646. STANDBY GUARDIANS

(a) Petition for Appointment of Standby Guardian for Minor.

(1)Contents. A minor's guardian or the natural guardians of a minor may petition for the appointment of a standby guardian of the person or property of the minor. The petition shall be verified by the petitioner and shall state:

(A) the facts to establish venue;

(B) the petitioner's residence and post office address;

(C) the name, age, and residence and post office address of the minor;

(D) the names and addresses of the parents of the minor and, if none, the next of kin known to the petitioner;

(E) the name and residence and post office address of the proposed standby guardian, and that the proposed standby guardian is qualified to serve;

(F) the proposed standby guardian's relationship to and any previous association with the minor;

(G) the reasons why the proposed standby guardian should be appointed; and

(H) the nature and value of the property subject to the guardianship.

(2)Notice and Waiver of Notice. Notice of the hearing on the petition must be served on the parents, natural or adoptive, of the minor and on any guardian for the minor. Notice may be waived by those required to receive notice or by the court for good cause.

(b) Petition for Appointment of Standby Guardian for Incapacitated Person.

(1)Contents. A currently serving guardian may petition for the appointment of a standby guardian of the person or property of an

incapacitated person. The petition shall be verified by the petitioner and shall state:

(A) the petitioner's residence and post office address;

(B) the name, age, and residence and post office address of the incapacitated person;

(C) the nature of the incapacity, the extent of guardianship, either limited or plenary, and the nature and value of property subject to the guardianship;

(D) the names and addresses of the next of kin of the incapacitated person known to the petitioner;

(E) the name and residence and post office address of the proposed standby guardian, and that the proposed standby guardian is qualified to serve;

(F) the proposed standby guardian's relationship to and any previous association with the incapacitated person; and

(G) the reasons why the proposed standby guardian should be appointed.

(2)Notice. Notice of the hearing on the petition must be served on the incapacitated person's next of kin.

(c) Petition for Confirmation.

(1)Contents. A standby guardian, not later than 20 days after the assumption of duties as guardian, shall petition for confirmation of appointment. The petition shall be verified by the petitioner and shall state:

(A) the petitioner's residence and post office address;

(B) the name, age, and residence and post office address of the incapacitated person or minor;

(C) the nature of the incapacity, the extent of guardianship, either limited or plenary, and the nature and value of property subject to the guardianship;

(D) the names and addresses of the next of kin of the incapacitated person or minor known to the petitioner;

(E) the name and residence and post office address of the proposed guardian, and that the proposed guardian is qualified to serve;

(F) the proposed guardian's relationship to and any previous association with the incapacitated person or minor;

(G) the reasons why appointment of the proposed guardian should be confirmed; and

(H) if the proposed guardian is a professional guardian, a statement that the proposed guardian has complied with the educational requirements of section 744.1083, Florida Statutes.

(2)Service. The petition for confirmation and notice of hearing shall be served on the incapacitated person's next of kin a reasonable time before the hearing on the petition or other pleading seeking confirmation of the guardian.

Committee Notes

The standby guardian must file an oath pursuant to rule 5.600 before commencing the exercise of authority as guardian. Prior to appointment, the standby guardian must file an application pursuant to rule 5.590.

Rule History

2006 Revision: New rule.

Statutory Reference

§ 744.304, Fla. Stat. Standby guardianship.

Rule References

Fla. Prob. R. 5.590 Application for appointment as guardian; disclosure statement. filing.

Fla. Prob. R. 5.600 Oath.

RULE 5.647. SURROGATE GUARDIAN

(a) Petition for Designation of Surrogate Guardian. A guardian may file a petition to designate a surrogate guardian to exercise the powers of the guardian if the guardian is unavailable to act. The surrogate must be a professional guardian. The petition shall state:

(1) the name and business address of the surrogate guardian;

(2) the requested duration of the appointment; and

(3) the powers to be exercised by the surrogate guardian.

(b) Service. The petition for appointment of a surrogate guardian shall be served on all interested persons and the ward, unless the ward is a minor.

(c) Oath. The surrogate guardian must file with the court an oath swearing or affirming that the surrogate guardian will faithfully perform the duties delegated.

(d) Termination. Prior to the expiration of the period granted by court order, the guardian may terminate the authority of the surrogate guardian by filing a written notice of the termination with the court and serving it on the surrogate guardian.

Committee Notes

Rule History

2006 Revision: New rule.

Statutory Reference

§ 744.442, Fla. Stat. Delegation of authority.

RULE 5.660. PROCEEDINGS FOR REMOVAL OF GUARDIAN

(a) Notice. Proceedings for removal of a guardian may be instituted by a court, by any surety or other interested person, or by the ward, and formal notice of the petition for removal of a guardian shall be served on all guardians, other interested persons, next of kin, and the ward. The pleading shall state with particularity the reasons why the guardian should be removed.

(b) Accounting. A removed guardian shall file with the court an accounting for the guardianship within 20 days after the guardian's removal. A copy of the accounting shall be served on the successor guardian and the ward, unless the ward is a minor.

(c) Transfer of Property and Records. The removed guardian (or the guardian's heirs, personal representative, or surety) shall turn over all the property of the ward in the removed guardian's control and all guardianship records to the duly qualified successor. The successor guardian shall, or the ward may, demand of the removed guardian (or the guardian's heirs, personal representative, or surety) all of those items.

(d) Failure to Comply. If a removed guardian fails to file a true, complete, and final accounting for the guardianship or to turn over to the successor all property of the ward in the removed guardian's control and all guardianship records, the court shall issue a show-cause order.

Committee Notes

Rule History

1977 Revision: No change in rule. Change in committee notes to conform to statutory renumbering.

1980 Revision: Subdivision (a) amended to specifically authorize any guardian or next of kin to file the petition and to require formal notice in conformity with rule 5.630(b).

1984 Revision: Subdivision (b) amended to conform to statute. Editorial changes and committee notes revised.

1988 Revision: Subdivision (a) rewritten for clarity. Language in (b) deleted as surplusage. Editorial change in caption of (c). Committee notes revised. Citation form change in committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Subdivision (a) amended to require that the petition allege specific reasons why the guardian should be removed and to require service of the petition on the ward. Otherwise, editorial changes in all subdivisions.

1992 Revision: Citation form changes in committee notes.

2006 Revision: Requirement in (b) to serve minors deleted to conform to 2006 amendment to section 744.511, Florida Statutes.

Statutory References

§ 744.474, Fla. Stat. Reasons for removal of guardian.

§ 744.477, Fla. Stat. Proceedings for removal of a guardian.

§ 744.511, Fla. Stat. Accounting upon removal.

§ 744.514, Fla. Stat. Surrender of property upon removal.

§ 744.517, Fla. Stat. Proceedings for contempt.

Rule References

Fla. Prob. R. 5.025 Adversary proceedings.

Fla. Prob. R. 5.040 Notice.

Fla. Prob. R. 5.041(b) Service of pleadings and papers.

RULE 5.680. TERMINATION OF GUARDIANSHIP

(a) Petition for Discharge. When the ward has become sui juris, has terminated a voluntary guardianship, has been restored to capacity, or has died, or when the guardian has been unable to locate the ward after diligent search, or, for a guardian of the property, when the property subject to the guardianship has been exhausted, the guardian shall file a petition for discharge. A guardian of the person is discharged without further proceeding upon filing a certified copy of the ward's death certificate.

(b) Contents of Petition. The petition for discharge shall state:

(1) the reason for termination of the guardianship;

(2) that the guardian has fully administered the guardianship; and

(3) the amount of unpaid and anticipated costs and fees to be paid to the guardian and to the attorneys, accountants, or other agents employed by the guardian.

(c) Final Report. The guardian of the property shall promptly file a final report. If the ward has died, the guardian must file the report no later than 45 days after he or she has been served with letters of administration, letters of curatorship, or an order of summary administration. The report shall showing receipts, disbursements, amounts reserved for unpaid and anticipated disbursements, costs, and fees, including the amounts set forth in subdivision (b)(3), and other relevant financial information from the date of the previous annual accounting, and a list of the assets to be turned over to the person entitled to them.

(d) Notice. A notice shall be served stating:

(1) that any objection shall be in writing and shall state with particularity each item to which the objection is directed and the grounds on which the objection is based;

(2) that any objection to the final report or the petition for discharge shall be filed within 30 days from the date of service of the petition for discharge; and

(3) that within 90 days after filing of the objection, a notice of hearing thereon shall be served or the objection is abandoned.

(e) Service. The guardian applying for discharge shall serve a copy of the petition for discharge and final report on the ward, on the personal representative of a deceased ward, or if there are no assets justifying qualification of a personal representative for the estate of a deceased ward, on the known next of kin of the deceased ward, or such other persons as the court may direct; provided however, that a guardian of the property who is subsequently appointed personal representative shall serve a copy of the petition for discharge and final report on all beneficiaries of the ward's estate.

(f) Objections. All persons served shall have 30 days to file objections to the petition for discharge and final report. The objections shall state with particularity the items to which the objections are directed and shall state the grounds on which the objections are based. Copies of the objections shall be served by the objector on the guardian. Any interested person may set a hearing on the objections. Notice of the hearing shall be served on the guardian and any other interested persons. If a notice of hearing on the objections is not served within 90 days of filing of the objections, the objections will be deemed abandoned. The guardian may not be discharged until all objections have been withdrawn, abandoned, or judicially resolved, and the petition for discharge of the guardian is granted by the court.

(g) Discharge. The guardian may not be discharged until all objections are withdrawn, abandoned, or judicially resolved. After all objections are withdrawn, abandoned, or judicially resolved, and if it appears that the guardian has paid all amounts reserved to the persons entitled to them and has made full and complete distribution of the ward's assets to the persons entitled to them and has otherwise faithfully discharged the duties of the guardian, the court shall grant the petition for discharge and enter an order of discharge. If objections are filed and are not withdrawn, abandoned, or judicially resolved, the court shall conduct a hearing in the same manner as for a hearing on objections to annual guardianship plans. After hearing, if the court is satisfied that the guardian has faithfully discharged the duties of the guardianship and the interests of the ward are protected, and the guardian has rendered a complete and accurate final report and has delivered the assets of the ward to the person entitled to them, the court shall enter an order of discharge.

~~(h) **Waiver.** Any portion of the petition for discharge, including the final report, or the time for filing of objections may be waived by any interested person.~~

Committee Notes

Rule History

1975 Revision: Implements sections 744.527 and 744.531, Florida Statutes, and also requires the guardian applying for discharge to do so by filing a petition for discharge and provides the procedure pertaining thereto.

1977 Revision: No change in rule. Change in committee note to conform to statutory renumbering.

1988 Revision: Captions added to subdivisions. Committee notes revised. Citation form changes in committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Substantial revision of entire rule to harmonize with procedure for discharge of personal representatives under rules 5.400 and 5.401.

1992 Revision: Committee notes revised. Citation form changes in committee notes.

1996 Revision: Editorial changes to clarify that all anticipated costs and fees should be shown on final report and thereafter paid prior to transfer of assets and discharge of guardian.

2003 Revision: Subdivision (a) amended to reflect addition of rule 5.552 dealing with voluntary guardianship of property. Committee notes revised.

2006 Revision: Subdivision (c) amended to conform to 2006 amendments to section 744.527, Florida Statutes. Subdivision (h) deleted as unnecessary because substantive right of waiver is provided by section 731.302, Florida Statutes.

Statutory References

- § 744.521, Fla. Stat. Termination of guardianship.
- § 744.527, Fla. Stat. Final reports and application for discharge; hearing.
- § 744.528, Fla. Stat. Discharge of guardian named as personal representative.
- § 744.531, Fla. Stat. Order of discharge.
- § 744.534, Fla. Stat. Disposition of unclaimed funds held by guardian.

Rule References

- Fla. Prob. R. 5.040 Notice.
- Fla. Prob. R. 5.041 Service of pleadings and papers.
- Fla. Prob. R. 5.180 Waiver and consent.
- Fla. Prob. R. 5.552 Voluntary guardianship of property.
- Fla. Prob. R. 5.610 Execution by guardian.

**RULE 5.685. DETERMINATION REGARDING
ALTERNATIVES TO GUARDIANSHIP**

(a) Reporting by Guardian. The guardian shall promptly file a report attaching a copy of a final order or judgment that determines the validity of a ward's durable power of attorney, trust, or trust amendment.

(b) Petition. At any time after the appointment of a guardian, the guardian, the ward, the ward's attorney, if any, or any other interested person may file a verified petition stating that there is an alternative to guardianship that will sufficiently address the problems of the ward.

(c) Contents of Petition. The petition to determine alternatives to guardianship shall state:

(1) the petitioner's interest in the proceeding; and

(2) the facts constituting the basis for the relief sought and that the proposed alternative to guardianship will sufficiently address the problems of the ward and is in the ward's best interest.

(d) Service. The petition shall be served on the guardian, the ward, the ward's attorney, if any, those interested persons who have filed requests for notices and copies of pleadings, and such other persons as the court may direct.

(e) Order. The order shall specify whether there is an alternative to guardianship that will sufficiently address the problems of the ward, the continued need for a guardian, and the extent of the need for delegation of the ward's rights.

Committee Notes

Rule History

2006 Revision: New rule.

Statutory References

§ 744.331, Fla. Stat. Procedures to determine incapacity.

§ 744.462, Fla. Stat. Determination regarding alternatives to guardianship.

RULE 5.695. ANNUAL GUARDIANSHIP REPORT

(a) Contents and Filing.

(1) Guardian of the Person. Unless the court requires reporting on a calendar year basis, the guardian of the person shall file an annual guardianship plan within 90 days after the last day of the anniversary month in which the letters of guardianship were issued. The plan shall be for the year ending on the last day of such anniversary month. If the court requires reporting on a calendar year basis, the guardianship plan shall be filed on or before April 1 of each year.

(2) Guardian of the Property. Unless the court requires or authorizes reporting on a fiscal year basis, the guardian of the property shall file an annual accounting on or before April 1 of each year. The annual accounting shall cover the preceding annual accounting period. If the court requires or authorizes reporting on a fiscal year basis, the annual accounting shall be filed on or before the first day of the fourth month after the end of the fiscal year.

(b) Service. Copies of the annual plan and accounting shall be served on the ward, unless the ward is a minor ~~under the age of 14 years~~ or is totally incapacitated, and the attorney for the ward, if any. With the approval of the court, service on the ward may be accomplished by serving the attorney for the ward. The guardian shall serve copies on such other persons as the court may direct.

Committee Notes

The annual guardianship report consists of the annual plan for the guardian of the person and the annual accounting for the guardian of the property.

For annual guardianship reports regarding minors, see rule 5.555.

With approval of the court, service on the ward may be accomplished by service on the attorney for the ward, if any. The committee was concerned that actual service on a ward of the accounting or guardianship plan may give uninterested persons access to financial or personal information to the detriment of the ward. The committee believes that under such circumstances, the guardian of the property could seek an order under

section 744.371(5), Florida Statutes, even if the ward's circumstances were set out in detail in a pleading other than the annual guardianship report. Such court order may be sought in appropriate circumstances at the time of the initial hearing to determine incapacity.

Rule History

1975 Revision: Substantially the same as section 744.427(1), (2), and (4), Florida Statutes, and section 744.437, Florida Statutes, with editorial changes and providing for the waiving, by a ward who has become sui juris or by the personal representative of a deceased ward, of the filing of an annual accounting. The rule requires the guardian of the property of a ward to appear before the court at the time he files his annual accounting or at such time the court shall determine in order that the court may inquire as to any matter relating to the physical and financial well-being of the ward. This appears to be in conflict with section 744.437, Florida Statutes, which refers to "every guardian" but in the same sentence it refers to "at the time the guardian files his annual return" and only the guardian of the property is required to file an annual accounting.

1977 Revision: No change in rule. Change in committee note to conform to statutory renumbering.

1980 Revision: Subdivision (e) amended to avoid conflict with statutory changes in section 744.437, Florida Statutes (1979).

1988 Revision: Matter in (b) deleted; covered in sections 744.427(2) and 744.434, Florida Statutes. Subdivision (c) deleted; covered in section 744.427(4), Florida Statutes. Captions added to subdivisions. Committee notes revised. Citation form changes in committee notes.

1989 Revision: Prior rule deleted and replaced by temporary emergency rule.

1991 Revision: Substantial changes and rule renumbered.

1992 Revision: Addition of language in subdivisions (a)(1) and (a)(2) to implement 1992 amendments to sections 744.367(1) and (2), Florida Statutes. Committee notes revised. Citation form changes in committee notes.

2006 Revision: Requirement in (b) to serve minors age 14 and above
deleted to conform to amendment to section 744.367(3), Florida Statutes.
Committee notes revised.

Statutory References

§ 744.367, Fla. Stat. Duty to file annual guardianship report.
§ 744.3675, Fla. Stat. Annual guardianship plan.
§ 744.3678, Fla. Stat. Annual accounting.
§ 744.3685, Fla. Stat. Order requiring guardianship report; contempt.
§ 744.3701, Fla. Stat. Inspection of report.
§ 744.371, Fla. Stat. Relief to be granted.
§ 744.3735, Fla. Stat. Annual appearance of the guardian.

Rule References

Fla. Prob. R. 5.020 Pleadings; verification; motions.
Fla. Prob. R. 5.041 Service of pleadings and papers.
Fla. Prob. R. 5.060 Request for notices and copies of pleadings.
Fla. Prob. R. 5.180 Waiver and consent.
Fla. Prob. R. 5.552 Voluntary guardianship of property.
Fla. Prob. R. 5.555 Guardianships of minors.
Fla. Prob. R. 5.610 Execution by guardian.
Fla. Prob. R. 5.700 Objection to guardianship reports.
Fla. Prob. R. 5.800(b) Application of revised chapter 744 to existing guardianships.

RULE 5.720. COURT MONITOR

(a) Appointment. Upon motion or inquiry by any interested person or upon its own motion, the court may appoint a court monitor in any proceeding over which it has jurisdiction.

(b) Order of Appointment. The order of appointment shall state the name, address, and phone number of the monitor and shall set forth the matters to be investigated. The order may authorize the monitor to investigate, seek information, examine documents, or interview the ward. The order of appointment shall be served upon the guardian, the ward, and such other persons as the court may determine.

(c) Report. The monitor shall file a verified written report with the court setting forth the monitor's findings. The report shall be served on the guardian, the ward, and such other persons as the court may determine.

(d) Protection of Ward. If it appears from the monitor's report that further action by the court to protect the interests of the ward is necessary, the court shall, after a hearing with notice, enter any order necessary to protect the ward or the ward's estate, including amending the plan, requiring an accounting, ordering production of assets, or initiating proceedings to remove a guardian. Notice of the hearing shall be served on the guardian, the ward, and such other persons as the court may determine.

Committee Notes

This rule applies to the non-emergency appointment of court monitors.

Rule History

2006 Revision: New rule.

Statutory References

§ 744.107, Fla. Stat. Court monitors.

§ 744.3701, Fla. Stat. Inspection of report.

RULE 5.725. EMERGENCY COURT MONITOR

(a) Appointment. Upon motion or inquiry by any interested person or upon its own motion, the court may appoint a court monitor on an emergency basis without notice in any proceeding over which it has jurisdiction.

(b) Order of Appointment. The order of appointment shall specifically find that there appears to be imminent danger that the physical or mental health or safety of the ward will be seriously impaired or that the ward's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken. The scope of the matters to be investigated and the powers and duties of the monitor must be specifically enumerated in the order.

(c) Duration of Authority. The authority of a monitor appointed under this section expires 60 days after the date of appointment or upon a finding of no probable cause, whichever occurs first. The court may enter an order extending the authority of the monitor for an additional 30 days upon a showing that an emergency condition still exists.

(d) Report. Within 15 days after the entry of an order of appointment, the monitor shall file a verified written report setting forth the monitor's findings and recommendations. The report may be supported by documents or other evidence. The time for filing the report may be extended by the court for good cause.

(e) Review. Upon review of the report, the court shall enter an order determining whether there is probable cause to take further action to protect the person or property of the ward.

(1) If the court finds no probable cause, the court shall enter an order finding no probable cause and discharging the monitor.

(2) If the court finds probable cause, the court shall enter an order directed to the respondent stating the essential facts constituting the conduct charged and requiring the respondent to appear before the court to show cause why the court should not take further action. The order shall specify the time and place of the hearing with a reasonable time to allow for the preparation of a defense after service of the order. A copy of the order to

show cause together with the order of appointment and report of the monitor shall be served upon the guardian, the ward, the ward's attorney, if any, and the respondent.

(f) Protecting Ward. If at any time prior to the hearing on the order to show cause the court enters a temporary injunction, a restraining order, an order freezing assets, an order suspending the guardian or appointing a guardian ad litem, or any other order to protect the physical or mental health, safety, or property of the ward, the order or injunction shall be served on the guardian, the ward, the ward's attorney, if any, and such other persons as the court may determine.

Committee Notes

Rule History

2006 Revision: New rule.

Statutory references

§ 744.1075, Fla. Stat. Emergency court monitor.